

Employment Rights

*of Pregnant
Women*

In Maryland

Rights of the Pregnant Worker in Maryland

If you are a pregnant worker in Maryland,
your rights are protected by:

1

The Pregnancy Discrimination Act

2

The Family and Medical Leave Act

3

The Maryland Human Relations Law,
Article 49B

1 The Pregnancy Discrimination Act*

The Pregnancy Discrimination Act became law on October 31, 1978, amending Title VII of the Civil Rights Act of 1964.

The Pregnancy Discrimination Act provides that:

It is illegal for a woman to be fired, refused a job, or denied a promotion because she is pregnant or has had an abortion.

A pregnant worker cannot be forced to go on leave as long as she is able to work.

A woman who is unable to work due to pregnancy-related reasons is entitled to receive disability benefits or sick leave on the same basis as any employee who is unable to work for other medical reasons.

Any health insurance provided at work must cover expenses for pregnancy-related conditions in the same way the insurance covers other medical conditions.

**Information contained here regarding the Pregnancy Discrimination Act comes from the Federal Register, Rules and Regulations, Volume 44, No. 78, April 20, 1979.*

2 The Family and Medical Leave Act

WHO IS COVERED:

The Family and Medical Leave Act of 1993 (FMLA) covers all employees who work for companies with 50 or more employees within 75 miles of a given work place. An employee must have worked at least 12 months for the employer and 1,250 hours in the past year to be eligible for the FMLA benefit.

BASIC PROVISIONS:

12 Weeks of Leave

All covered employees may take up to 12 weeks of unpaid leave during any 12-month period for any of the following reasons:

- Birth of a child;
- Adoption of a child or taking in a child for foster care;
- Caring for a spouse, child, or parent with a serious health condition; or
- Serious health condition of the employee

Return to Work

An employee who takes leave under the law must be allowed to return to the same job or an equivalent job.

Health Benefits Coverage

The employer must continue the employee's health benefits during the leave period at the same level and conditions as if the employee had continued to work.

3 The Maryland Human Relations Law

The Maryland Human Relations Law addresses the issue of pregnancy disability.

Pregnancy-related disabilities are temporary disabilities and shall be treated as such under any health or temporary disability insurance or sick leave plan available through employment.

Written and unwritten employment policies and practices involving matters such as those below shall be applied to pregnancy or pregnancy-related disabilities in the same way they apply to other temporary disabilities:

- the beginning or length of leave***
- the availability of extensions***
- the accrual of seniority and other benefits and privileges***
- reinstatement and payment under any health or temporary disability insurance or sick leave plan***

WHO IS COVERED UNDER THE LAW

Q. Who is covered by the federal Pregnancy Discrimination Act?

A. The Act covers federal, state and local government employers with fifteen or more workers. It also covers private businesses that employ at least fifteen workers and participate in interstate commerce.

Q. Who is covered by the federal Family and Medical Leave Act?

A. All employees who work for employers with 50 or more employees within 75 miles of a given workplace. An employee must have worked at least 12 months for the employer and 1,250 hours in the past year to be eligible.

Q. Who is covered by the Maryland Human Relations Law?

A. The Maryland law covers employers who have fifteen or more employees. This also includes state and local government employers.

Q. May an employer offer disability benefits for pregnancy only to married employees?

A. No.

Q. If an employer has an all female workforce, must benefits be provided for pregnancy-related conditions?

A. Yes. If benefits are provided for other conditions, they must also be provided for pregnancy-related conditions.

JOB PERFORMANCE DURING PREGNANCY

Q. If a woman is unable to do her job for pregnancy-related reasons, does the employer have to provide her a different job?

A. Maybe. An employer must treat an employee who is temporarily unable to perform her job because of a pregnancy-related condition the same way as it treats other temporarily disabled employees. The employer may provide easier tasks, different assignments, disability leave, leave without pay, etc., if other temporarily disabled employees receive these as well.

Q. Must an employer hire a woman who is unable to perform the essential functions of the job because of a pregnancy-related condition?

A. No. An employer may not refuse to hire a woman simply because she is pregnant. However, an employer may refuse to hire a woman if her pregnancy-related condition makes her unable to perform the essential functions of the job for which she is applying.

PREGNANCY-RELATED LEAVE

Q. May an employer require a pregnant employee to take a leave of absence even though she is able to work or deny leave to a pregnant employee who is unable to work because of her pregnancy-related condition?

A. No. An employer may not single out pregnancy-related conditions for special procedures for determining an employee's ability to work.

Q. May an employer have a rule that prohibits an employee from returning to work for a certain length of time after childbirth?

A. No.

Q. If an employee has been absent from work due to a pregnancy-related condition and recovers, can her employer require her to remain on leave until after the baby is born?

A. No. An employee must be permitted to work at all times during pregnancy when she is able to perform her job.

Q. Is an employer required to hold an employee's job open if she must take leave because of a temporary disability caused by her pregnancy?

A. Maybe. Employees who are eligible under the Family and Medical Leave Act must be able to return to the same job or a job with equivalent status and pay.

Q. Must the employer's policy regarding the crediting of seniority during absences for medical conditions be the same for pregnancy-related conditions?

A. Yes, it must be the same.

Q. When determining matters such as vacations and pay increases, may an employer credit time spent on leave for pregnancy-related reasons differently than time spent on leave for other reasons?

A. No. An employer's policy regarding crediting time cannot treat employees on leave for pregnancy-related reasons less favorably than employees on leave for other reasons.

Q. May an employee who is absent due to a pregnancy-related disability be required to use up vacation benefits before receiving sick leave pay or disability benefits?

A. Maybe. If employees who are absent because of other disabling causes receive sick leave pay or disability benefits without any requirements that they first use up vacation benefits, the employer cannot force this requirement on an employee absent for a pregnancy-related cause.

However, if an employee is taking leave under the Family and Medical Leave Act, the employer can require the employee to use up all paid vacation, personal or sick leave before using unpaid leave.

LEAVE FOR CHILDCARE

Q. Must an employer grant leave to a female employee for childcare purposes after she is medically able to return to work following leave because of pregnancy, childbirth, or related medical conditions?

A. The Family and Medical Leave Act provides eligible employees unpaid leave under these circumstances. While leave for childcare purposes is not covered by the Pregnancy Discrimination Act, both Title VII and the Maryland law require that leave for childcare purposes be granted on the same basis as leave is granted to employees for other non-medical purposes (e.g., annual leave).

PROVISION OF BENEFITS

Q. How long is an employer required to offer income maintenance benefits for pregnancy-related disabilities if the employer provides income maintenance benefits for other temporary disabilities?

A. Pregnancy-related disabilities must be treated the same as other temporary disabilities.

Q. Must an employer who provides benefits for long-term or permanent disabilities provide such benefits for pregnancy-related conditions?

A. Yes, benefits must be provided to the same extent.

Q. If an employer provides benefits, such as insurance or pension benefits, to employees on leave, must the same benefits be provided for those on leave for pregnancy-related conditions?

A. Yes.

HEALTH INSURANCE

Q. If an employer provides its employees a choice among several health insurance plans, must coverage for pregnancy-related conditions be offered in all of the plans?

A. Yes.

Q. On what basis should an employee be paid the medical expenses of pregnancy, childbirth or related conditions?

A. Pregnancy-related expenses should be paid in the same manner as expenses for other medical conditions.

For example, if a plan provides major medical coverage, pregnancy-related conditions must also be covered. If a plan covers the cost of a private room for other conditions, the plan must cover the cost of a private room for pregnancy-related conditions. If a health insurance plan covers office visits to physicians, both pre-natal and post-natal office visits must be covered as well.

Q. *May an employer limit payment of costs for pregnancy-related medical conditions?*

A. Maybe. The amounts payable for the expenses of pregnancy-related conditions may be limited only if payment for other conditions is limited.

Q. *May an employer impose a different deductible for payment of costs for pregnancy-related medical conditions than for costs of other medical conditions?*

A. No. Neither an additional deductible nor a larger deductible can be imposed for coverage for pregnancy-related medical costs.

Q. *If a health insurance plan excludes coverage for pre-existing conditions, may coverage be denied for a pregnancy that existed at the time the insurance plan became effective?*

A. Yes.

Q. Must an employer provide health insurance coverage to the spouses of male employees for the medical expenses of pregnancy-related conditions?

A. Maybe. If an employer's insurance program covers the medical expenses of spouses of employees, then the coverage must include medical expenses of pregnancy-related conditions. The insurance does not have to cover the pregnancy-related conditions of non-spouse dependents, such as the employee's children, as long as coverage is the same for all employees.

Q. With regard to health care coverage, must the employer cover the pregnancy costs for spouses of employees the same as it covers actual employees?

A. No. The level of coverage for pregnancy-related conditions can be different for employees than for the spouses of employees. However, the level of coverage for pregnancy-related conditions for spouses of employees must be the same as the level of coverage for all other medical conditions for spouses of all employees.

ABORTION

Q. May an employer discharge, fire, refuse to hire or otherwise discriminate against a woman because she has had, or is thinking about having, an abortion?

A. No.

Q. Must an employer provide health insurance coverage for abortions?

A. No, except if the life of the mother is endangered by the pregnancy.

Q. *May an employer elect to provide insurance coverage for abortions?*

A. Yes. The Pregnancy Discrimination Act specifically provides that an employer is allowed to provide benefits for abortions whether directly or through a collective bargaining agreement.

Q. *Must an employer provide other health benefits for abortions?*

A. Yes. All fringe benefits (other than health insurance), such as sick leave, that are provided for other medical conditions must be provided for abortions.

Q. *If complications arise during the course of an abortion (such as excessive hemorrhaging) must an employer's health insurance plan cover the additional cost?*

A. Yes. The plan is required to pay additional costs of the complications of an abortion. However, the employer is not required to pay for the abortion itself, except when the life of the mother would be endangered.

Where You May Go For Assistance

If you believe that you may have experienced discriminatory employment practices with regard to your rights as a pregnant worker, contact:

The Maryland Commission on Human Relations

6 St. Paul Street, 9th Floor
Baltimore, MD 21202
410-767-8600

The Montgomery County Office of Human Rights

110 N. Washington Street, Suite 200
Rockville, MD 20850
240-777-8450

The Maryland Commission for Women

45 Calvert Street
Annapolis, MD 21401
410-260-6047, Toll free 1-877-868-2196

The Montgomery County Commission for Women Counseling & Career Center

401 N. Washington Street, Suite 100
Rockville, MD 20850
240-777-8300
www.montgomerycountymd.gov/cfw

The U.S. Equal Employment Opportunity Commission

(Baltimore District Office)
10 S. Howard Street, 3rd Floor
Baltimore, MD 21202
410-962-3932

Women's Bureau – Work and Family Clearinghouse

200 Constitution Avenue
U.S. Department of Labor
Washington, DC 20210
202-693-6710; (toll free) 1-800-827-5335

Your Union Shop Steward*

Your Company Equal Opportunity Official*

*Please consult your telephone directory for numbers and locations not listed above.

Online Resources Include:

National Employment Lawyers Association
www.nela.org

Workplace Fairness
www.workplacefairness.org

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